IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.07.2006

CORM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

Contempt Petition Nos.742 & 748 of 2002

Sub.Application Nos.502 & 503 of 2003 and
WPMP No.8719 and 8720 of 2004 in
WP.Nos.2585 & 2586 of 1994

1. Elizebath Anne Simpson
2. Rose Mary Jane Simpson
3. Maria Rose Simpson .. Petitioners in Cont.Petn.No.742/02

1. Charles Hereward Simpson
2. Harold Arthur Simpson .. Petitioners in Cont.Petn.No.748/02

Vs.

K. Shivashankaran
The Tahsildar
Thovala Taluk
Boothapandi Post
Kanyakumari District. .. Respondent in both the contempt.

WPMP No.8719 and 8720 of 2004

The District Forest Officer,
Kanyakumari at Nagercoil,
Nagercoil Post,
Kanyakumari District. ..Petitioners in both the petitions
(2nd Respondent in WP No.2585 and 2586/94)

-vs-

Elizabeth Anne Simpson
Rose Mary Jane Simpson
Margaret Rose Simpson ..Respondents 1 to 3 in WPMP No.8719/2004
(Petitioners in WP No.2585/94)

Charles Herward Simpson
Harold Arthor Simpson ..Respondents 1 & 2 in WPMP No.8720/2004
(Petitioner in WP No.2586/94)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The Tahsildar,
Thovalai Taluk,
Boothapandy Post,
Kanyakumari District.

The Government of Tamil Nadu rep.by
the Collector of Kanyakumari District. .. Respondents 4 & 5 in WPMP No.8719/2004 and Respondents 3 & 4 in WPMP No.8720/2004 (Respondents 1 & 3 in WP Nos.2585 and 2586/94)

Contempt Petitions filed under Article 215 of the Constitution of India read with Section 10 and 12 of the Contempt of Courts Act, 1970.

For appellants : Mr. D. Sadhasivan
For respondent : Mr. P.S. Raman,
Addl. Advocate General
Assisted by
Mr. Titus Jesudoss Spl.Govt. Pleader(Forest)
And Mr. P. Wilson, Spl. Govt. Pleader(Writs)

COMMON ORDER

The petitioners, complaining that the common order dated 20.01.1997 made in W.P.Nos.2585 and 2586 of 1994 has not been implemented, filed contempt petition Nos.742 and 748 of 2002.

2. The contempt petitioners filed the said writ petitions praying for a writ of Mandamus directing the respondents, particularly, the first respondent Tahsildar, Thovala Taluk, Kanyakumari District to grant patta for 65.86 acres and 205.42 acres of lands as per the Commissioner's plans marked as Exs.C.2 and C.4 in O.S.Nos.66 and 67 of 1986 respectively on the file of District Judge, Kanyakumari at Nagercoil. After hearing both parties, this Court, by order dated 20.01.1997, allowed both the writ petitions and directed the said Tahsildar to issue patta within a period of four weeks from the date of receipt of copy of the said order. It is also the grievance of the petitioners that in spite of various representations, the respondent herein (R.1 in writ petitions) has not granted patta, as directed by this Court by order dated 20.01.1997.

3. Pursuant to the notice, the respondent Tahsildar appeared in person. The second respondent in the writ petitions, viz., District Forest Officer, Kanyakumari District at Nagercoil has filed two miscellaneous petitions, viz., WPMP.Nos.8719 and 8720 of 2004 seeking for modification of the order dated 20.01.1997 in W.P.Nos.2585 and 2586 of 1994 respectively. In the affidavits filed in support of the above

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petitions it is stated that while taking steps to implement the order of this Court, the Revenue Department surveyed the area and in that survey it was found that the area identified by the parties clearly falls within the Asambu Reserved Forest. It is stated that the property identified by the petitioners is situate in a hill area with about 3500 to 4500 natural trees and the property used to receive rain for atleast 1 to 9 months in a year. It is further stated that the subject matter of land attracts the provisions of Forest Conservation Act, 1980 since the same is declared as Reserve Forest. The Hon'ble Supreme Court in W.P.(Civil)No.202 of 1995 dated 12.12.1996 directed all the States to implement the Forest (Conservation) Act, 1980 without any variance. As per the order of the Supreme Court, the word "Forest" must be understood according to its dictionary meaning and this description covers all statutorily recognized forest whether designated as reserve, protected or otherwise for the purpose of Section 2(1) of the Forest (Conservation) Act. The Supreme Court further held that the term "forest land" occurring in Section 2 will not only include "Forest" as understood in the dictionary sense, but also any area recorded as Forest in the Government record irrespective of ownership. It is further stated that there is a specific ban by the Supreme Court to grant patta in respect of to Reserve Forest area and hence the order dated 20.01.1997 requires modification.

4. In the light of the above factual details this Court heard Mr. D. Sadasivan, learned counsel for the contempt petitioners and Mr. P.S. Raman, learned Additional Advocate General for the respondents.

5. At the outset, learned Additional Advocate General submitted that the directions of the Hon'ble Supreme Court in T.N. Godhavarman Thirumulkpad vs. Union of India and others (1997 (2) SCC 267), particularly the direction in respect of State of Tamil Nadu would squarely apply to the case on hand and in the light of the ban order and of the fact that the land in question lies in a reserve forest area, patta cannot be issued as directed. He also contended that the said direction has to be modified and both the contempt petitions are liable to be dismissed.

6. On the other hand, Mr. D. Sadasivan, learned counsel for the petitioners submitted that in view of the decree granted by the competent civil Court, which is confirmed by this Court and of the fact that the lands in question are patta lands, direction of the Supreme Court is not applicable and respondent has to be punished for disobeying the order dated 20.01.1997.

7. It is not in dispute that in T.N. Godhavarman's case, the Hon'ble Supreme Court in order to protect the environment and ecology of the country and to preserve the forest, issued several directions. The direction in so far as the State of Tamil Nadu is concerned, reads as under.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

I.A.No.418.

Notice to the State of Tamil Nadu returnable in the first week of August, 1999.

In the meantime, no pattas with regard to any forest land shall be granted nor shall any encroachment be regularized. "

Learned Additional Advocate General also submitted that even today the said direction is in force and there cannot be any violation. He also brought to my notice that in 1997 (2) SCC 267 (TN. Godhavarman's case), while considering the definition of the word "Forest" found in the Forest Conservation Act, 1980, the Hon'ble Supreme court has held that, the word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forest, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2 will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forest area and the directions connected therewith must be applied clearly to all forest areas so understood irrespective of the ownership or classification thereof.

8. In the light of the clarification by the Hon'ble Supreme Court and the order passed in I.A.No.418 in W.P. (Civil) No.202 of 1995, which relates to State of Tamil Nadu, I am in agreement with the objection raised by the learned Additional Advocate General. Unless and until the same is clarified by the Hon'ble Supreme Court, the Tahsildar cannot be penalized.

In the light of the above discussion, the following order is passed. The common order dated 20.01.1997 made in W.P.Nos.2585 and 2586 of 1994 is subject to order in I.A.No.418 in W.P.(Civil) No.202 of 1995, pending on the file of Supreme Court. With the above direction, the contempt applications are closed and WPMPs., are ordered accordingly. In view of disposal of the main contempt petitions, connected sub applications are closed.

Sd/
Asst.Registrar
27.7.2006

Corrected Order to be issued
Sd/-
Asst. Registrar
28.11.2006

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Kh

To

1. The Registrar,
Original Side,
High Court, Madras.

2. The Section Officer,
Writ Section,
High Court, Madras.

4 ccs To Mr.D.Sadhasivan, Advocate,
SR.31029, 31028, 6439, 6440.
1 cc To The Special Government
Pleader (Forests) SR.6508.

To be substituted to the order already despatched on 7.8.2006

Common Order in Cont.Petn.Nos.742 &748/02

JRG (CO)
km/30.11.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/